

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2003 - 0001

RESOLUTION ADOPTING AMENDED REGULATIONS GOVERNING REVIEW
BY STATE BOARD OF ACTION OR FAILURE TO ACT BY REGIONAL BOARD

WHEREAS:

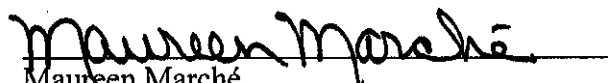
1. Section 13320 of the California Water Code provides that an aggrieved party may seek review by the State Water Resources Control Board (SWRCB) of any action or failure to act by a regional water quality control board (regional board).
2. Chapter 6 of Division 3 of Title 23 of the California Code of Regulations sets forth rules by which the State Board reviews actions and failures to act by regional water quality control boards pursuant to water quality petitions filed under Water Code section 13320.
3. On July 19, 2002, the SWRCB published a Notice of Proposed Rulemaking and publicly circulated a draft of proposed revisions to the regulations governing water quality petitions.
4. The 45-day comment period closed on September 3, 2002.
5. The proposed amendments generated seven comment letters. The SWRCB did not receive a request for hearing.
6. The SWRCB considered the public comments and made a number of minor changes to the proposed regulations. A subsequent 15-day comment period was provided.
7. At the request of interested parties, the comment period was extended by approximately five weeks, closing on December 13, 2002. Two additional comments were received, and two non-substantial changes were made in response.
8. The SWRCB has responded to all comments in the Final Statement of Reasons. The SWRCB has determined that no further changes are warranted.

THEREFORE BE IT RESOLVED THAT:

The proposed amendments to Title 23, Division 3, Chapter 6 of the California Code of Regulations are adopted, and the Executive Director is authorized to transmit the amendments to the Office of Administrative Law for filing with the Secretary of State.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 22, 2003.


Maureen Marché
Clerk to the Board

CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND REGIONAL
WATER QUALITY CONTROL BOARDS
CHAPTER 6. REVIEW BY STATE BOARD OF ACTION OR FAILURE TO ACT BY
REGIONAL BOARD

s 2050. Petition for Review by State Board.

(a) Any petition by an aggrieved person to the state board for review under Water Code section 13320(a) of an action or failure to act by a regional board shall be submitted in writing and received by the state board within 30 days of any action or failure to act by a regional board. The petition shall contain the following:

- (1) Name, address, telephone number and email address (if available) of the petitioner.
- (2) The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition, if available. If the order or resolution of the regional board is not available, a statement should be included giving the reason(s) for not including the order or resolution.
- (3) The date on which the regional board acted or refused to act or on which the regional board was requested to act.
- (4) A full and complete statement of the reasons the action or failure to act was inappropriate or improper.
- (5) The manner in which the petitioner is aggrieved.
- (6) The specific action by the state or regional board which petitioner requests.
- (7) A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing where appropriate.
- (8) A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner.
- (9) A statement that the ~~substantive issues or objections~~~~contentions~~ raised in the petition were raised before the regional board, or an explanation of why the petitioner was not required or was unable to raise these ~~substantive issues or objections~~~~contentions~~ before the regional board.

(b) Service of a petition may be made by U.S. mail, by hand delivery, by facsimile with hard copy to follow, or via e-mail by prior arrangement. [In the case of service by facsimile, only the petition itself should be sent. All exhibits should be included with the hard copy.] The petition must be received by the state board no later than 5:00 p.m. 30 days following the date of the action or inaction by the regional board, except that if the thirtieth day following the date of the action or inaction falls on a Saturday, Sunday, or state holiday, the petition must be received by the state board no later than 5:00 p.m. on the first business day following.

(c) If the action or inaction that is the subject of the petition was taken by the regional board after notice and opportunity to comment, the petition to the state board shall be limited to those ~~contentions~~ substantive issues or objections that were raised before the regional board.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2050.5. Complete Petitions; Responses; Time Limits.

(a) Upon receipt of a petition that complies with section 2050 the state board may either dismiss the petition pursuant to Section 2052, or may provide written notification to the petitioner, informing the discharger (if not the petitioner), the regional board, and other interested persons that they shall have 30 days from the date of mailing such notification to file a response to the petition with the state board. The regional board shall file the administrative record within this 30-day period, including a copy of the tape recording of the regional board action, or a transcript, if available. Responses to petitions and any other submissions shall be served concurrently upon the petitioner, the discharger (if not the petitioner) and the regional board, by any method listed in section 2050(b). Any points and authorities filed in response to the petition shall include citations to documents or the transcript of the regional board hearing where appropriate. The time for filing a response or the administrative record may be extended by the state board. Additional submissions will be allowed only upon written request and at the discretion of the state board.

(b) The state board shall review and act on the petition within 270 days from the date of mailing the notification described in (a), unless a hearing is held by the state board. If a hearing is held, the state board shall act on the petition within 330 days from the date of mailing the notification described in (a), or within 120 days of the close of the hearing, whichever is later. If formal disposition is not made by the state board within these time limits the petition is deemed denied. These time limits may be extended for a period not to exceed 60 days with written agreement from the petitioner. The time limits for formal disposition do not apply while action on a petition is held in abeyance, as provided in section 2050.5(d).

(c) The state board may, on its motion, review a regional board's action or failure to act for any reason, including lack of formal disposition by the state board within the time limits provided in (b).

(d) A petition may be held in abeyance at the request or with the agreement of the petitioner.

(1) A request or agreement to hold a petition in abeyance must be in writing and shall be provided to the state board, the regional board, and the discharger, if not the petitioner.

(2) Petitions ~~will~~may be held in abeyance ~~only if unless~~ the regional board ~~provides~~ ~~reasonable grounds for objection~~~~does not object~~. For petitions challenging the assessment of administrative civil liability or penalties, written agreement from the regional board is required.

(3) The time limit for formal disposition shall be tolled during the time a petition is held in abeyance, and shall recommence running when the petition is removed from abeyance.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2050.6 Supplemental Evidence.

(a) If any person requests that the state board consider evidence not previously provided to the regional board, that person shall provide a statement that additional evidence is available that was not presented to the regional board or that evidence was improperly excluded by the regional board.

(1) The request to present additional evidence and all supporting arguments shall be provided at the time the petition is filed, or as soon as the evidence becomes available thereafter.

(2) The request to present additional evidence shall include a detailed statement of the nature of the evidence and of the facts to be proved. If the evidence was not presented to the regional board, the person requesting consideration of the evidence shall provide a detailed explanation of the reasons why the evidence could not previously have been submitted. If the person presenting the evidence contends that the evidence was improperly excluded, the request shall include a specific statement of the manner in which the evidence was improperly excluded.

(3) If the state board, in its discretion, approves a request to present additional evidence, the proponent must submit the evidence in writing and must also provide it to the petitioner, the discharger (if not the petitioner) and the regional board. The state board may prescribe a time limit for submission of the additional evidence.

(b) The petitioner may request that the state board conduct a hearing to consider testimony, other evidence, and argument. Such request shall be supported by a summary of contentions to be addressed or evidence to be introduced and a showing of why the contentions or evidence have not been previously or adequately presented. A request to conduct a hearing shall be submitted at the time the petition is filed or as soon as possible thereafter.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2051. Defective Petitions.

(a) Upon receipt of a petition that does not comply with section 2050, the state board shall notify the petitioner of the manner in which the petition is defective and the time within which an amended petition may be filed, unless the petition is dismissed pursuant to section 2052.

(b) If a properly amended petition is not received by the state board within the time allowed, the petition shall be dismissed unless cause is shown for an extension of time.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2052. Action on a Petition

(a) The state board may:

(1) At any time, refuse to review the action or failure to act of the regional board if the petition fails to raise substantial issues that are appropriate for review, or

(2) After review of all or part of the regional board's records pertaining to the matter, including the transcript of any hearing held by the regional board:

(A) Deny the petition upon a finding that the action or failure to act of the regional board was appropriate and proper or that the petition fails to raise substantial issues that are appropriate for review; or

(B) Set aside or modify the regional board order; or

(C) Direct the regional board to take appropriate action.

(b) The executive director may, on behalf of the state board, refuse to review the action or failure to act of the regional board if the petition fails to raise substantial issues that are appropriate for review. The executive director's refusal to review a petition shall be in writing.

(c) Before taking final action, the state board may, in its discretion, hold a hearing for the purpose of oral argument or receipt of additional evidence or both.

(1) If a hearing is held, the state board shall give reasonable notice of the time and place and of the issues to be considered to the petitioner, the discharger (if not the petitioner), the regional board, any interested persons who have filed a response to the petition pursuant to section 2050.5 and such other persons as the board deems appropriate.

(2) If a hearing is held, the state board in its discretion may require that all interested parties intending to participate shall submit to the state board in writing the name of each witness who will appear, together with a statement of the qualifications of each expert witness, the subject of the proposed testimony, and the estimated time required by the witness to present his direct testimony. The state board may also require that copies of proposed exhibits be supplied to all parties and to the state board.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2053. Stay Orders.

(a) A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts and produces proof of all of the following:

- (1) substantial harm to petitioner or to the public interest if a stay is not granted,
- (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted and
- (3) substantial questions of fact or law regarding the disputed action.

A petition for a stay shall be supported by a declaration under penalty of perjury of a person or persons having knowledge of the facts alleged. Upon a documented showing by petitioner that the request complies with the prerequisites for a stay, the state board or a member of the state board will hold a hearing. A request for a stay may be denied without a hearing. If a hearing is held, notice shall be given in such manner and to such persons, in addition to the petitioner, as the board deems appropriate.

(b) Nothing in subsection (a) shall preclude the state board from issuing a stay of the effect of an action of a regional board, after hearing, upon its own motion. The requirement of a declaration under penalty of perjury may be waived by the board in case of an emergency.

(c) The state board shall review and act on the request for a stay within 60 days from the date of mailing the notification described in section 2050.5(a). This limit may be extended by written agreement from the petitioner.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2064. Record.

The decision of the state board under section 2052(a)(2) shall be based upon the record before the regional board and any additional evidence admitted pursuant to Section 2050.6 and section 2052(c). The state board may, in its discretion, supplement the record with any other evidence and testimony deemed appropriate to consideration of the issues.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2066. Workshop Meeting.

(a) The state board may discuss a proposed order in response to a petition for review of an action of a regional water quality control board in a public workshop meeting prior to formal action at a board meeting. Comments may be submitted in writing prior to the workshop meeting. At the workshop meeting, the state board may invite comments on the proposed order from interested persons. All comments shall be based solely upon evidence contained in the record or upon legal argument.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

s 2067. Formal Disposition.

Unless denied by the executive director pursuant to Section 2052(b), formal disposition by the state board of any pending petition will be taken at a regularly or specially scheduled board meeting. At the meeting the board may invite comments on the matter from interested persons. These comments shall be based solely upon evidence contained in the record or legal argument.

No new evidence shall be submitted at the state board meeting. Written arguments submitted after the workshop meeting shall be limited to revisions to the proposed order that was considered by the state board at the workshop meeting. Such written arguments shall be filed at least two working days prior to the state board meeting, unless otherwise specified by the state board.

NOTE: Authority cited: section 1058, Water Code. Reference Cited: section 13320, Water Code.

